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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Senegal under article 29 (1) of the Convention

Addendum

Information received from Senegal on follow-up to the concluding observations*

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* The present document is being issued without formal editing.

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Paragraph 14. The Committee recommends that the State party expedite the process of revising the Criminal Code to give effect to the Convention with a view to defining and characterizing enforced disappearance as an autonomous offence, in line with the definition contained in article 2 of the Convention, that is subject to appropriate penalties that take into account the extremely serious nature of the offence.

1. Several sections of the national criminal law reform bills have already been adopted. These include the provisions relating to terrorism, cybercrime, community service, criminal endangerment, rendering a false alarm and the requirement for a lawyer to be present from the time of arrest (Acts Nos. 2016-29 and 2016-30 of 8 November 2016), and the provisions concerning the establishment of permanent criminal chambers in courts of major jurisdiction (Act No. 2014-28 of 3 November 2014). The other provisions of the reform bills, including those defining enforced disappearance as an autonomous offence, are under consideration and will be submitted for adoption as soon as possible. Senegal has embarked on this legislative review of criminal law in order to give effect to the obligations arising from the ratification of various international instruments and the recommendations issued by the different international and regional human rights mechanisms.

Paragraph 18. The Committee recommends that the State party amend its criminal legislation on enforced disappearance as a crime against humanity, especially article 431-2 (1) (6) of the Criminal Code, in order to ensure that it complies with article 5 of the Convention. In particular, the Committee recommends that enforced disappearance be mentioned separately from subjection to slavery and abduction and that article 431-2 expressly state that an act of enforced disappearance constitutes a crime against humanity.

2. The planned amendments will take account of this recommendation of the Committee. A separate paragraph will be inserted into article 431-2 of the Criminal Code that will characterize enforced disappearance as an underlying element of a crime against humanity.

Paragraph 34. The Committee recommends that the State party take the necessary measures to ensure that:

(a) All registers or records of persons deprived of their liberty are accurately and promptly completed and updated in such a way as to contain all the information required under article 17 (3) of the Convention;

3. The law requires officers of the criminal investigation police to keep a custody record indicating the start and end of the period of police custody, hours of rest, the nature of the offence and the reason for detention. The custody report is drawn up by the detaining officer, and the identity and function of the officer and the place of detention are clearly stated therein. These measures are regulated, inter alia, by article 55 (6), which states that:

> "In all places where persons are held in custody, officers of the criminal investigation police are required to keep a custody record, numbered and initialled by the Public Prosecutor, which is presented to the judges responsible for monitoring custody measures whenever requested."

4. In addition, article 57 of the Code stipulates that:

> "Custody reports drawn up by criminal investigation police officers in accordance with articles 46 and 54 shall be drafted on the spot and each page shall bear the officer's signature.
>
> Records of interviews with persons held in police custody must indicate the date and time at which the person was first placed in custody, the reasons for their being detained, the duration of questioning, the length of rest periods, and the date and time at which the person was either released or brought before the competent judge. These details must be signed by the persons concerned, with any refusals to sign also being noted in the custody record, on pain of nullity."

5. The Public Prosecutor has oversight of police custody measures.

(b) **Records are regularly subject to verification and, in the event that registers are not correctly completed and updated, the officials responsible are duly sanctioned, including through criminal proceedings, in accordance with the relevant legislation;**

6. The Public Prosecutor is under a legal obligation to inspect police detention facilities. Inspections are often unannounced and inspection reports detail any failings in the mandatory record-keeping formalities. Such failings may result in penalties being imposed by the appointing authority to which the reports are submitted. Article 59 of the Code of Criminal Procedure provides that:

> "If criminal investigation police officers commit acts of abuse in connection with the application of custodial measures, the Public Prosecutor, or his or her representative, shall inform the Attorney General, who shall refer the matter to the Indictments Chamber.
>
> Victims of acts of abuse of the kind referred to in the previous paragraph may also apply to the Indictments Chamber for their case to be examined.
>
> If a criminal offence is found to have been committed, in accordance with its powers under articles 213, 216 and 217 of the present Code, the Indictments Chamber may remove the perpetrator of the abuse from police service, either temporarily or permanently, or may return the case file to the Attorney General for the initiation of legal proceedings."

(c) **All persons deprived of liberty, irrespective of the offence of which they are accused, are afforded, from the outset of their deprivation of liberty, all the fundamental legal safeguards provided for under article 17 of the Convention;**

7. The conditions governing police detention are set out in article 55 of the Code of Criminal Procedure. The decision to place a person in custody is made either by the officer of the criminal investigation police or by the Public Prosecutor himself. In all cases, in accordance with article 55 (5), police custody measures are applied:

> "under the effective control of the Public Prosecutor, his or her representative, or, when necessary, the presiding judge of the trial court vested with the powers of the Public Prosecutor".

8. Detainees in police custody, like convicted prisoners, are held in facilities established for that purpose. Thus, persons in custody can be held only on police premises, while convicted persons are detained in prison institutions.

9. In accordance with article 55, as amended, of the Code of Criminal Procedure, criminal investigation police officers must inform persons held in custody of their right to communicate with their lawyer. This right applies from the time of arrest, in accordance with Regulation No. 5 of the West African Economic and Monetary Union.

10. Visiting rights are enshrined in law and family members may visit persons deprived of their liberty upon request. This right may be exercised at all levels of deprivation of liberty.

(d) **Any person with a legitimate interest can have prompt and easy access to at least the information listed in article 18 (1) of the Convention, including during the period of police custody, and the right of recourse where a request for access has been denied.**

11. Although there are no provisions guaranteeing this right in criminal law, it should be noted that, in practice, these items of information are always available to the persons concerned. The Government of Senegal acknowledges the need to amend its legislation in order to guarantee this right and will take account of this particular concern of the Committee in the legislative reform process under way.